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APPENDIX A

(Decision Below)

IN THE DISTRICT COURT OF APPEAL
FIRST DISTRICT, STATE OF FLORIDA

January Term, A. D. 1966

Case No. I-7

BROTHERHOOD OF RAILROAD TRAINMEN, a labor organization, *et al., Petitioners,*

-vs-

HONORABLE ROGER J. WAYBRIGHT, as Judge of the Circuit Court of the Fourth Judicial Circuit, in and for Duval County, Florida; and JACKSONVILLE TERMINAL COMPANY, a Florida Corporation, *Respondents.*

Order

Suggestion for writ of prohibition having been considered,

IT IS ORDERED that said suggestion fails to make out a prima facie case upon which Rule Nisi could issue. Said suggestion is hereby denied.

WITNESS the Honorable John S. Rawls, Chief Judge, and Seal of the Court, this 8th day of June, A. D. 1966.

RAYMOND E. RHODES
Clerk

A True Copy

Attest:

GRACE M. PENN
Deputy Clerk First District Court of Appeal, Tallahassee, Florida

APPENDIX B

(Statutes Involved)

1. *The Labor Management Relations Act,* 1947, 29 U.S.C. 141 et seq.

Section 2, 29 U.S.C. 152:

"DEFINITIONS

"SEC. 2. When used in this Act—

"(1) The term 'person' includes one or more individuals, labor organizations, partnerships, associations, corporations, legal representatives, trustees, trustees in bankruptcy, or receivers.

"(2) The term 'employer' includes any person acting as an agent of an employer, directly or indirectly, but shall not include the United States or any wholly owned Government corporation, or any Federal Reserve Bank, or any State or political subdivision thereof, or any corporation or association operating a hospital, if no part of the net earnings inures to the benefit of any private shareholder or individual, or any person subject to the Railway Labor Act, as amended from time to time, or any labor organization (other than when acting as an employer), or anyone acting in the capacity of officer or agent of such labor organization.

"(3) The term 'employee' shall include any employee, and shall not be limited to the employees of a particular employer, unless the Act explicitly states otherwise, and shall include any individual whose work has ceased as a consequence of, or in connection with, any current labor dispute or because of any unfair labor practice, and who has not obtained any other regular and substantially equivalent employment, but shall not include any individual employed as an agricultural laborer, or in the domestic service of any family or person at his home, or any individual employed by his parent or spouse, or any individual having the status of an independent contractor, or any individual employed as a supervisor, or any individual employed by an employer subject to the Railway Labor Act, as amended from time to time, or by any other person who is not an employer as herein defined.

"(4) The term 'representatives' includes any individual or labor organization.

"(5) The term 'labor organization' means any organization of any kind, or any agency or employee representation committee or plan, in which employees participated and which exists for the purpose, in whole or in part, of dealing with employers concerning grievances, labor disputes, wages, rates of pay, hours of employment, or conditions of work.

"(6) The term 'commerce' means trade, traffic, commerce, transportation, or communication among the several States, or between the District of Columbia or any Territory of the United States and any State or other Territory, or between any foreign country and any State, Territory, or the District of Columbia, or within the District of Columbia or any Territory, or between points in the same State but through any other State or any Territory or the District of Columbia or any foreign country.

"(7) The term 'affecting commerce' means in commerce, or burdening or obstructing commerce or the free flow of commerce, or having led or tending to lead to a labor dispute burdening or obstructing commerce or the free flow of commerce.

"(8) The term 'unfair labor practice' means any unfair labor practice listed in section 8.

"(9) The term 'labor dispute' includes any controversy concerning terms, tenure or conditions of employment, or concerning the association or representation of persons in negotiating, fixing, maintaining, changing, or seeking to arrange terms or conditions of employment, regardless of whether the disputants stand in the proximate relation of employer and employee.

"(10) The term 'National Labor Relations Board' means the National Labor Relations Board provided for in section 3 of this Act.

"(11) The term 'supervisor' means any individual having authority, in the interest of the employer, to hire, transfer, suspend, lay off, recall, promote, discharge, assign, reward, or discipline other employees, or responsibly to direct them, or to adjust their grievances, or effectively to

recommend such action, if in connection with the foregoing the exercise of such authority is not of a merely routine or clerical nature, but requires the use of independent judgment.

"(12) The term 'professional employee' means—

'(a) any employee engaged in work (i) predominantly intellectual and varied in character as opposed to routine mental, manual, mechanical, or physical work; (ii) involving the consistent exercise of discretion and judgment in its performance; (iii) of such a character that the output produced or the result accomplished cannot be standardized in relation to a given period of time; (iv) requiring knowledge of an advanced type in a field of science or learning customarily acquired by a prolonged course of specialized intellectual instruction and study in an institution of higher learning or a hospital, as distinguished from a general academic education or from an apprenticeship or from training in the performance of routine mental, manual, or physical processes; or

'(b) any employee, who (i) has completed the courses of specialized intellectual instruction and study described in clause (iv) of paragraph (a), and (ii) is performing related work under the supervision of a professional person to qualify himself to become a professional employee as defined in paragraph (a).

"(13) In determining whether any person is acting as an 'agent' of another person so as to make such other person responsible for his acts, the question of whether the specific acts performed were actually authorized or subsequently ratified shall not be controlling."

Section 7, 29 U.S.C. 157:

"SEC. 7. Employees shall have the right to self-organization, to form, join or assist labor organizations, to bargain collectively through representatives of their own choosing, and to engage in other concerted activities for the purpose of collective bargaining or other mutual aid or protection, and shall also have the right to refrain from any or all of such activities except to the extent that such right may be affected by an agreement requiring member-

ship in a labor organization as a condition of employment as authorized in section 8 (a) (3)."

Section 8(b)(4)(B), 29 U.S.C. 158:

"SEC. 8(b). It shall be an unfair labor practice for a labor organization or its agents—

"* * *

"(4)(i) to engage in, or to induce or encourage any individual employed by any person engaged in commerce or in an industry affecting commerce to engage in, a strike or a refusal in the course of his employment to use, manufacture, process, transport, or otherwise handle or work on any goods, articles, materials or commodities or to perform any services; or (ii) to threaten, coerce, or restrain any person engaged in commerce or in an industry affecting commerce, where in either case an object thereof is:

"* * *

"(B) forcing or requiring any person to cease using, selling, handling, transporting, or otherwise dealing in the products of any other producer, processor, or manufacturer, or to cease doing business with any other person, or forcing or requiring any other employer to recognize or bargain with a labor organization as the representative of his employees unless such labor organization has been certified as the representative of such employees under the provisions of section 9: Provided, That nothing contained in this clause (B) shall be construed to make unlawful, where not otherwise unlawful, any primary strike or primary picketing;

"* * *

"Provided, That nothing contained in this subsection (b) shall be construed to make unlawful a refusal by any person to enter upon the premises of any employer (other than his own employer), if the employees of such employer are engaged in a strike ratified or approved by a representative of such employees whom such employer is required to recognize under this Act: Provided further, That for the purposes of this paragraph (4) only, nothing contained in such paragraph shall be construed to prohibit publicity, other than picketing, for the purpose of truthfully advising the public, including consumers and members

of a labor organization, that a product or products are produced by an employer with whom the labor organization has a primary dispute and are distributed by another employer, as long as such publicity does not have an effect of inducing any individual employed by any person other than the primary employer in the course of his employment to refuse to pick up, deliver, or transport any goods, or not to perform any services, at the establishment of the employer engaged in such distribution."

Section 8(c), 29 U.S.C. 158(c):

"(c) The expressing of any views, argument, or opinion, or the dissemination thereof, whether in written, printed, graphic, or visual form, shall not constitute or be evidence of an unfair labor practice under any of the provisions of this Act, if such expression contains no threat of reprisal or force or promise of benefit."

2. *The Norris-LaGuardia Act,* 29 U.S.C. 101 et seq.

Section 1, 29 U.S.C. 101:

"SEC. 1. No court of the United States, as herein defined, shall have jurisdiction to issue any restraining order or temporary or permanent injunction in a case involving or growing out of a labor dispute, except in a strict conformity with the provisions of this Act; nor shall any such restraining order or temporary or permanent injunction be issued contrary to the public policy declared in this Act."

Section 2, 29 U.S.C. 102:

"SEC. 2. In the interpretation of this Act and in determining the jurisdiction and authority of the court of the United States, as such jurisdiction and authority are herein defined and limited, the public policy of the United States is hereby declared as follows:

Whereas under prevailing economic conditions, developed with the aid of governmental authority for owners of property to organize in the corporate and other forms of ownership association, the individual unorganized worker is commonly helpless to exercise actual liberty of contract and to protect his freedom of labor, and thereby to obtain acceptable terms and conditions of employment, wherefore, though he should be free to decline to associate with his

fellows, it is necessary that he have full freedom of association, self-organization, and designation of representatives of his own choosing, to negotiate the terms and conditions of his employment, and that he shall be free from the interference, restraint, or coercion of employers of labor, or their agents, in the designation of such representatives or in self-organization or in other concerted activities for the purpose of collective bargaining or other mutual aid or protection; therefore, the following definitions of, and limitations upon, the jurisdiction and authority of the courts of the United States are hereby enacted."

Section 4, 29 U.S.C. 104:

"SEC. 4. No court of the United States shall have jurisdiction to issue any restraining order or temporary or permanent injunction in any case involving or growing out of any labor dispute to prohibit any person or persons participating or interested in such dispute (as these terms are herein defined) from doing, whether singly or in concert, any of the following acts:

(a) Ceasing or refusing to perform any work or to remain in any relation of employment;

(b) Becoming or remaining a member of any labor organization or of any employer organization, regardless of any such undertaking or promise as is described in Section 3 of this Act;

(c) Paying or giving to, or withholding from, any person participating or interested in such labor dispute, any strike or unemployment benefits or insurance, or other moneys or things of value;

(d) By all lawful means aiding any person parcipating or interested in any labor dispute who is being proceeded against in, or is prosecuting, any action or suit in any court of the United States or of any State;

(e) Giving publicity to the existence of, or the facts involved in, any labor dispute, whether by advertising, speaking, patrolling, or by any other method not involving fraud or violence;

(f) Assembling peaceably to act or to organize to act in promotion of their interests in a labor dispute;

(g) Advising or notifying any person of an intention to do any of the acts heretofore specified;

(h) Agreeing with other persons to do or not to do any of the acts heretofore specified; and

(i) Advising, urging, or otherwise causing or inducing without fraud or violence the acts heretofore specified, regardless of any such undertaking or promise as is described in Section 3 of this Act."

Section 5, 29 U.S.C. 105:

"SEC. 5. No court of the United States shall have jurisdiction to issue a restraining order or temporary or permanent injunction upon the ground that any of the persons participating or interested in a labor dispute constitute or are engaged in an unlawful combination or conspiracy because of the doing in concert of the acts enumerated in Section 4 of this Act."

Section 13, 29 U.S.C. 113:

"SEC. 13. When used in this Act, and for the purposes of this Act—

"(a) A case shall be held to involve or to grow out of a labor dispute when the case involves persons who are engaged in the same industry, trade, craft, or occupation; or have direct or indirect interests therein; or who are employees of the same employer; or who are members of the same or an affiliated organization of employers or employees; whether such dispute is (1) between one or more employers or associations of employers and one or more employees or associations of employees; (2) between one or more employers or associations of employers and one or more employers or associations of employers; or (3) between one or more employees or associations of employees and one or more employees or associations of employees; or when the case involves any conflicting or competing interests in a "labor dispute" (as hereinafter defined) of "persons participating or interested" therein (as hereinafter defined).

"(b) A person or association shall be held to be a person participating or interested in a labor dispute, if relief is sought against him or it, and if he or it is engaged in

the same industry, trade, craft, or occupation in which such dispute occurs, or has a direct or indirect interest therein, or is a member, officer, or agent of any association composed in whole or in part of employers or employees engaged in such industry, trade, craft, or occupation.

"(c) The term 'labor dispute' includes any controversy concerning terms or conditions of employment, or concerning the association or representation of persons in negotiating, fixing, maintaining, changing, or seeking to arrange terms or conditions of employment, regardless of whether or not the disputants stand in the proximate relation of employer and employee.

"(d) The term 'court of the United States' means any court of the United States whose jurisdiction has been or may be conferred or defined or limited by Act of Congress, including the courts of the District of Columbia."

3. *The Clayton Antitrust Act,* 38 Stat. 730, 15 U.S.C. 17, 29 U.S.C. 52:

Section 6, 15 U.S.C. 17:

"SEC. 6. That the labor of a human being is not a commodity or article of commerce. Nothing contained in the antitrust laws shall be construed to forbid the existence and operation of labor, agricultural, or horticultural organizations, instituted for the purposes of mutual help, and not having capital stock or conducted for profits, or to forbid or restrain individual members of such organizations from lawfully carrying out the legitimate objects thereof; nor shall such organizations, or the members thereof, be held or construed to be illegal combinations or conspiracies in restraint of trade under the antitrust laws."

Section 20, 29 U.S.C. 52:

"SEC. 20. That no restraining order or injunction shall be granted by any court of the United States, or a judge or the judges thereof, in any case between an employer and employees, or between employers and employees, or between employees, or between persons employed and persons seeking employment, involving, or growing out of, a dispute concerning terms or conditions of employment, unless necessary to prevent irreparable injury to property, or

to a property right, of the party making the application, for which injury there is no adequate remedy at law, and such property or property right must be described with particularly in the application, which must be in writing and sworn to by the applicant or by his agent or attorney.

And no such restraining order or injunction shall prohibit any person or persons, whether singly or in concert, from terminating any relation of employment, or from ceasing to perform any work or labor, or from recommending, advising, or persuading others by peaceful means so to do; or from attending at any place where any such person or persons may lawfully be, for the purpose of peacefully obtaining or communicating information, or from peacefully persuading any person to work or to abstain from working; or from ceasing to patronize or to employ any party to such dispute, or from recommending, advising, or persuading others by peaceful and lawful means so to do; or from paying or giving to, or withholding from, any person engaged in such dispute, any strike benefits or other moneys or things of value; or from peaceably assembling in a lawful manner, and for lawful purposes; or from doing any act or thing which might lawfully be done in the absence of such dispute by any party thereto; nor shall any of the acts specified in this paragraph be considered or held to be violations of any law of the United States."

4. *The Railway Labor Act*, 45 U.S.C. 151 et seq.

Section 1, Definitions, 45 U.S.C. 151:

"SEC. 1. Definitions. When used in this Act and for the purposes of this Act—

First. The term "carrier" includes any express company sleeping-car company carrier by railroad, subject to the Interstate Commerce Act, and any company which is directly or indirectly owned or controlled by or under common control with any carrier by railroad and which operates any equipment or facilities or performs any service (other than trucking service) in connection with the transportation, receipt, delivery, elevation, transfer in transit, refrigeration or icing, storage, and handling of property transported by railroad, and any receiver, trustee, or other individual or body, judicial or otherwise, when in

the possession of the business of any such "carrier": *Provided however,* That the term "carrier" shall not include any street, inter-urban, or suburban electric railway, unless such railway is operated as a part of a general steam-railroad system of transportation now or hereafter operated by any other motive power. The Interstate Commerce Commission is hereby authorized and directed upon request of the Mediation Board or upon complaint of any party interested to determine after hearing whether any line operated by electric power falls within the terms of this proviso. The term "carrier" shall not include any company by reason of its being engaged in the mining of coal, the supplying of coal to carrier where delivery is not beyond the tipple, and the operation of equipment or facilities therefor, or any of such activities.

Second. The term "Adjustment Board" means the National Railroad Adjustment Board created by this Act.

Third. The term "Mediation Board" means the National Mediation Board created by this Act.

Fourth. The term "commerce" means commerce among the several States or between any State, Territory, or the District of Columbia and any foreign nation, or between any Territory or the District of Columbia and any State, or between any Territory, and any other Territory, or between any Territory and the District of Columbia, or within any Territory or the District of Columbia, or between points in the same State but through any other State or any Territory or the District of Columbia or any foreign nation.

Fifth. The term "employee" as used herein includes every person in the service of a carrier (subject to its continuing authority to supervise and direct the manner of rendition of his service) who performs any work defined as that of an employee or subordinate official in the orders of the Interstate Commerce Commission now in effect, and as the same may be amended or interpreted by orders hereafter entered by the Commission pursuant to the authority which is hereby conferred upon it to enter orders amending or interpreting such existing orders: *Provided, however,* That no occupational classification made by order of the Interstate Commerce Commission shall be construed to define the crafts according to which railway employees

may be organized by their voluntary action, nor shall the jurisdiction or powers of such employee organizations be regarded as in any way limited or defined by the provisions of this Act or by the orders of the Commission. The term "employee" shall not include any individual while such individual is engaged in the physical operations consisting of the mining of coal, the preparation of coal, the handling (other than movement by rail with standard locomotives) of coal not beyond the mine tipple, or the loading of coal at the tipple.

Sixth. The term "representative" means any person or persons, labor union, organization, or corporation designated either by a carrier or group of carriers or by its or their employees, to act for it or them.

Seventh. The term "district court" includes the Supreme Court of the District of Columbia; and the term "circuit court of appeals" includes the Court of Appeals of the District of Columbia.

[Short Title.] This Act may be cited as the "Railway Labor Act."

Section 1a, General Purposes, 45 U.S.C. 151a:

"SEC. 2. General Purposes. The purposes of the Act are: (1) To avoid any interruption to commerce or to the operation of any carrier engaged therein; (2) to forbid any limitation upon freedom of association among employees or any denial, as a condition of employment or otherwise, of the right of employees to join a labor organization; (3) to provide for the complete independence of carriers and of employees in the matter of self-organization; (4) to provide for the prompt and orderly settlement of all disputes concerning rates of pay, rules, or working conditions; (5) to provide for the prompt and orderly settlement of all disputes growing out of grievances or out of the interpretation or application of agreements covering rates of pay, rules, or working conditions.

APPENDIX C

IN THE DISTRICT COURT OF APPEAL OF FLORIDA
FIRST DISTRICT

No.

BROTHERHOOD OF RAILROAD TRAINMEN, a labor organization;

ORDER OF RAILWAY CONDUCTORS AND BRAKEMEN, a labor organization;

BROTHERHOOD OF LOCOMOTIVE FIREMEN AND ENGINEMEN, a labor organization;

RAY MOORE, an individual;

LOWELL KENNEDY, an individual;

T. C. BOLAND, an individual; and

J. E. EASON, an individual,

Petitioners,

v.

HONORABLE ROGER J. WAYBRIGHT, as Judge of the Circuit Court of the Fourth Judicial Circuit, in and for Duval County, Florida; and

JACKSONVILLE TERMINAL COMPANY, a Florida corporation,

Respondents.

Suggestion for Writ of Prohibition

To the Honorable, the Judges of the District Court of Appeal of Florida, First District:

The Petitioners, BROTHERHOOD OF RAILROAD TRAINMEN, a labor organization; ORDER OF RAILWAY CONDUCTORS AND BRAKEMEN, a labor organization; BROTHERHOOD OF LOCOMOTIVE FIREMEN AND ENGINEMEN, a labor organization; RAY MOORE, an individual; LOWELL KENNEDY, an individual; T. C. BOLAND, an individual; and J. E. EASON, an individual, respectfully suggest that the Respondent, HONORABLE ROGER J. WAYBRIGHT, as one of the Judges of the Circuit

Court of the Fourth Judicial Circuit, in and for Duval County, Florida, is exceeding his jurisdiction, powers, and authority in a certain proceeding in the said Circuit Court, wherefore Petitioners hereby pray for the issuance by this Court of a Writ of Prohibition directed to the HONORABLE ROGER J. WAYBRIGHT, as Judge of the Circuit Court of the Fourth Judicial Circuit, in and for Duval County, Florida, and to the JACKSONVILLE TERMINAL COMPANY, a Florida corporation, the party plaintiff in that certain suit now pending in said Court under the style of *Jacksonville Terminal Co.* v. *Brotherhood of Railroad Trainmen, et al.*, No. 66-2941-E, in which all Petitioners are named defendants, prohibiting said respondent Circuit Judge from exercising jurisdiction over the subject matter of said suit.

1. This petition is presented under and pursuant to Article 5, Section 5, of the Florida Constitution, and Rule 4.5(d) of the Florida Appellate Rules.

2. This petition is accompanied by exhibits showing the nature of the proceedings below, and a supporting brief.

3. This petition is based upon the following grounds:

A. That on the 4th day of May, 1966, your Petitioner, the Brotherhood of Railroad Trainmen (having commenced on April 24, 1966, a lawful strike against the Florida East Coast Railway Company, based upon a major dispute under the Railway Labor Act, 45 U.S.C. § 151 et seq.), established peaceful and orderly picket lines around the premises of the Respondent Jacksonville Terminal Co. (where the Florida East Coast Railway Company regularly carries on its daily business), calling upon fellow railroad employees to cease rendering services to the Florida East Coast Railway Company and to make common cause with them in their major dispute with the Florida East Coast Railway Company. See *Brotherhood of Locomotive Firemen & Enginemen* v. *Florida East Coast Ry. Co.*, 346 F. 2d 673 (5 Cir., 1965).

B. That on the 24th day of May, 1966, the said Jacksonville Terminal Co. filed a sworn complaint against Peti-

tioners in the Circuit Court in and for Duval County, Florida, seeking an injunction and damages against the aforesaid picketing, as appears more fully in the copy of said complaint attached hereto as "Exhibit A" and made a part hereof. The case thus commenced was docketed as Case No. 66-2941-E, *Jacksonville Terminal Co.* v. *Brotherhood of Railroad Trainmen, et al.*

C. That on the 28th and 29th days of May, 1966, evidentiary hearings were held in said case before the Honorable Roger J. Waybright as Judge of said Court. Petitioners objected to said proceedings on the grounds, inter alia, that the Circuit Court of Duval County, Florida, had no jurisdiction to entertain said proceedings for the reason that the action alleged by plaintiff to be illegal was "arguably subject" to the exclusive primary jurisdiction of the National Labor Relations Board under Sections 7 and 8(b)(4)(B) of the National Labor Relations Act, 29 U.S.C. §§ 157, 158(b)(4)(B), and therefore, state court jurisdiction is preempted and the state court has no jurisdiction or power to determine or pass upon the legality vel non of the alleged conduct. *San Diego Building Trades* v. *Garmon* (1959), 359 U.S. 236, 79 S. Ct. 773; *Garner* v. *Teamsters Union* (1953), 346 U.S. 485, 74 S. Ct. 161; *Marine Engineers Beneficial Assn.* v. *Interlake Steamship Co.* (1962), 370 U.S. 173, 82 S. Ct. 1237; *Scherer & Sons, Inc.* v. *International Ladies Garmet Workers,* 142 So. 2d 290 (Fla. 1962).

D. The plaintiff denied that the National Labor Relations Board had "arguable jurisdiction" for two reasons: (1) that as a railroad carrier, it did not have standing to make charges before the National Labor Relations Board, and (2) that defendant labor organizations were not subject to regulation under the National Labor Relations Act. Defendants submitted that as a matter of law, the plaintiff did have a standing to make charges before the National Labor Relations Board [see National Labor Relations Act, Section 8(b)(4)(B), 1959 Amendments, 29 U.S.C. § 158 (b)

(4)(B); *Local Union No. 25* v. *New York, New Haven & Hartford R. Co.* (1956), 350 U.S. 155, 76 S. Ct. 227] and that, *arguably,* defendants were subject to regulation under the National Labor Relations Act [see National Labor Relations Act, Sections 2, 7, 8(b)(4)(B), 29 U.S.C. §§ 152, 157, 158(b)(4)(B); *Marine Engineers Beneficial Association* v. *Interlake Steamship Co.* (1962), 370 U.S. 173, 82 S. Ct. 1237; *International Brotherhood of Electrical Workers* v. *NLRB,* 350 F. 2d 791 (C.A., D.C., 1965), cert. denied, March 21, 1966, 16 L. Ed. 2d 206; *Brotherhood of Locomotive Firemen & Enginemen and Brotherhood of Railroad Trainmen,* and *Phelps Dodge Corporation,* 130 NLRB No. 94, 47 LRRM 1461 (1961)].

E. The jurisdiction of the National Labor Relations Board over the conduct sought to be enjoined by the plaintiff is clearly "arguable" under the above-cited decisions, and therefore, the Circuit Court below had no jurisdiction to enjoin such conduct. *Marine Engineers Beneficial Association* v. *Interlake Steamship Co.* (1962), 370 U.S. 173, 82 S. Ct. 1237.

F. Petitioners further objected to said proceedings upon the ground that the said Court had no jurisdiction to apply state law in this dispute which is fully regulated to the exclusion of state law by substantive federal law. National Labor Relations Act, 29 U.S.C. § 141 et seq.; Railway Labor Act, 45 U.S.C. § 151 et seq.; Clayton Antitrust Act, 38 Stat. 730, 29 U.S.C. § 52, 15 U.S.C. § 17; Norris-LaGuardia Act, 29 U.S.C. § 101 et seq.; *Teamsters Union* v. *Morton* (1964), 377 U.S. 252; *United Mine Workers* v. *Gibbs* (1966), 16 L.Ed 2d 812, 86 S. Ct. 1130; *International Association of Machinists* v. *Central Airlines* (1964), 372 U.S. 682; *Brotherhood of Railroad Trainmen* v. *Chicago R. & I.R. Co.* (1957), 353 U.S. 30.

G. Nevertheless, in usurpation of the jurisdiction of the National Labor Relations Board, and in excess of its own jurisdiction, the Honorable Roger J. Waybright as Judge

of the Circuit Court of Duval County, Florida, on May 30, 1966, entered an Order for Temporary Injunction, a certified copy of which is attached hereto as "Exhibit E", enjoining and restraining Petitioners from picketing the said Terminal Company premises, a course of conduct which is arguably subject to the jurisdiction of the National Labor Relations Board, and is protected, legal activity under federal law.

H. The following exhibits to this Suggestion are attached hereto and incorporated herein by reference:

Exhibit A:
Complaint and affidavits.

Exhibit B:
Answer.

Exhibit C:
Amended Complaint.

Exhibit D:
Order dated May 28, 1966.

Exhibit E:
Order for Temporary Injunction dated May 30, 1966.

Exhibit F:
Defendants' Exhibit 1, which is a sworn complaint filed by Plaintiff against Defendants in the U.S. District Court for the Middle District of Florida on May 4, 1966.

Exhibit G:
Excerpt from Testimony and Transcript of Proceedings held by Circuit Court below on Saturday afternoon, May 28, 1966, pp. 12-13.

I. Your Petitioners further show that the said cause remains pending in the Circuit Court of Duval County, Florida, on the said Order for Temporary Injunction, and your Petitioners aver that the said Circuit Judge is with-

out jurisdiction to hear and render judgment in said cause, but will, if not prohibited by Writ of this Honorable Court, retain said cause and continue said injunction entered without and in excess of the jurisdiction of said Court.

J. Petitioners aver that they have no plain, speedy, and adequate remedy save by the issuance of a Writ of Prohibition by this Honorable Court.

WHEREFORE, Petitioners respectfully pray that this Honorable Court issue an alternative Writ of Prohibition directed to Respondents and requiring them to show cause why the said Writ should not issue as prayed for.

Respectfully submitted,

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Exhibit A

IN THE CIRCUIT COURT, FORTH JUDICIAL CIRCUIT,
IN AND FOR DUVAL COUNTY, FLORIDA

CASE NO. IN CHANCERY.

DIVISION

JACKSONVILLE TERMINAL COMPANY, a corporation, *Plaintiff*,

v.

BROTHERHOOD OF RAILROAD TRAINMEN, an unincorporated association in its own right and as representative of its membership and Ray Moore and Lowell Kennedy, individually and as officials of said brotherhood; and the members of said organization;

ORDER OF RAILWAY CONDUCTORS AND BRAKEMEN, an unincorporated association in its own right and as representative of its membership and T. C. Boland, individually and as an official of said brotherhood; and the members of said organization;

BROTHERHOOD OF LOCOMOTIVE FIREMEN AND ENGINEMEN, an unincorporated association in its own right and as representative of its membership and J. E. Eason, individually and as an official of said brotherhood; and the members of said organization,

Defendants.

Complaint for Injunction

Comes now Jacksonville Terminal Company, Plaintiff, by and through its undersigned attorneys, and respectfully shows to the Court as follows:

1. Plaintiff is a corporation organized and existing under the Laws of the State of Florida, with its principal place of business in Jacksonville, Duval County, Florida. Plaintiff is engaged in the railroad terminal business at Jacksonville, Florida, where it owns and operates railroad

yards and a railway station that provides such services for the following railroads: Atlantic Coast Line Railroad Company; Seaboard Airline Railroad Company; Florida East Coast Railway Company; and Southern Railway System.

2. The Defendants are an unincorporated labor organization; the defendant Ray Moore is Deputy Vice President of the defendant Brotherhood of Railroad Trainmen and generally is in charge of promoting the acts and things hereinafter alleged; other defendants are members of said labor organizations or individuals participating in concert with said organizations in the unlawful acts hereinafter set forth. The members of the above-captioned labor organizations are so numerous as to make it impracticable to bring them all before the Court.

3. This action arises under the Constitution and Laws of the State of Florida.

4. The defendant Brotherhoods are presently on strike against the Florida East Coast Railway Company and in the course of said strike have directed primary and lawful picketing against said railroad at various locations throughout the State of Florida. The plaintiff in 1963 designated a separate entrance in and to its premises for use exclusively by the employees of the Florida East Coast Railway Company.

5. At the present time the plaintiff has collective bargaining contracts with the defendants, Brotherhood of Railroad Trainmen and Order of Railway Conductors and Brakemen. Said collective bargaining contracts are presently in full force and effect and there is no dispute thereunder, major or minor, within the meaning of the Railway Labor Act. None of plaintiff's employees are represented by the defendant, Brotherhood of Locomotive Firemen and Enginemen. None of the defendants named individually above are employees of plaintiff and plaintiff further

alleges that it has no labor dispute with any of the above named defendants and that no labor demands have been made to plaintiff by any of its employees or their respective bargaining agents.

6. On to-wit, May 4, 1966, the defendant Brotherhoods their officers, agents and employees commenced picketing and patrolling the premises of the plaintiff at places other than the entrance designated for use by Florida East Coast Railway employees to the end that plaintiff's premises were completely surrounded. Said pickets identified themselves as members of the defendant, Brotherhood of Railroad Trainmen and carried placards which state that they are on legal strike against the Florida East Coast Railroad. Plaintiff is informed and believes that all three of the defendant Brotherhoods are on strike against the Florida East Coast Railroad Company and further believes that the defendants other than the Brotherhood of Railroad Trainmen, unless hereby enjoined, will continue or commence picketing of plaintiff's premises.

7. As a result of the acts of defendants the employees of plaintiff, Atlantic Coast Line Railroad Company and the Seaboard Airline Railroad Company, none of whom were or are in any wise involved in the dispute between defendants and the Florida East Coast Railway Company, were induced and encouraged thereby to honor said pickets and to refuse to honor their respective work contracts by reporting to work. Plaintiff further alleges that defendants further counseled, advised and persuaded plaintiff's employees to not report to work, even though plaintiff's employees were and are not involved in any dispute with plaintiff regarding their working agreement.

8. As a result of the above and foregoing acts of defendants, plaintiff and other railroads filed an action for injunctive relief and damages in the United States District Court for the Middle District of Florida on May 4, 1966, being case No. 66-357-Civ-J. As a result of said Com-

plaint the Hon. William A. McRae, Jr., United States District Judge issued a Temporary Restraining Order on May 4, 1966, and thereafter, on May 10, 1966, after a full evidenciary hearing, entered a preliminary injunction enjoining the acts of defendants. Thereafter defendants on to-wit, May 18, 1966, applied for and obtained from the United States Court of Appeals for the Fifth Circuit an Order staying the preliminary injunction. Thereafter said Court sitting in Atlanta, Georgia on May 23, 1966, entered its Order dissolving said preliminary injunction effective eleven o'clock A.M. May 24, 1966 on the grounds that the District Court was without jurisdiction. Plaintiff is informed and verily believes that said picketing will be resumed immediately and their presence is eminent unless this Court grants the relief herein sought.

9. During the proceedings before the District Court the defendant, Ray Moore, who identified himself as Deputy Vice President of the defendant, Brotherhood of Railroad Trainmen, testified that the purpose of the alleged picketing was to induce the plaintiff, its officers, agents and employees not to perform services for the Florida East Coast Railway Company.

10. There is no dispute between plaintiff and its employees or between plaintiff and defendants which is subject to the provisions of the Railway Labor Act.

11. The provisions of the National Labor Relations Act as amended, 29 U.S.C.A. § 141 et seq. are not applicable to the instant situation and the same cannot be said to be "arguable" within the meaning and application of said Act in that plaintiff and defendants are expressly excepted therefrom. 29 U.S.C.A. § 152(2)(3).

12. The acts of defendant constitute a secondary boycott of plaintiff's premises, are an illegal and unwarranted interference with the collective bargaining agreements between plaintiff and its employees, are contrary to the public policy, safety and welfare of the State of Florida as

pronounced in the Constitution and Laws of the State of Florida and if permitted to continue will result in immediate and irreparable harm and injury to plaintiff, many industries in the State of Florida and the public at large all of which more particularly appears from the affidavits of Arthur C. Herrington, Alfred G. Johnson and G. G. Jones Cecil Batton, attached hereto and by this reference made a part of this complaint. Many of plaintiff's employees will be deprived of earning their livelihood.

13. Jurisdiction of this matter not being proper in the Federal Courts, this Court has jurisdiction of the subject matter and the parties and is the only forum that can grant plaintiff relief and prevent the great and irreparable damages that will flow with certainty from defendants actions. Plaintiff has no other remedy. Far greater injury will be inflicted on plaintiff and the citizens of the State of Florida by denial of the relief sought herein than can result to the defendants by the granting of said relief prayed for herein.

WHEREFORE, Plaintiff prays:

1. That the Court issue a preliminary injunction made permanent on final hearing, and pending hearing and determination of plaintiff's motion for a preliminary injunction the Court issue a temporary restraining order on the grounds that immediate, irreparable injury, loss and damage will result to plaintiff before notice can be served and a hearing had on said Motion for Preliminary Injunction.

2. That the temporary restraining order, preliminary injunction and permanent injunction enjoin and restrain the defendants individually and their officers, agents, servants, employees, representatives, members, attorneys and all other persons acting at the direction of or in active concert or participation with them, and all persons receiving notice of any such orders of the Court from:

(a) Ordering, directing, authorizing, recommending, sanctioning, starting, continuing, permitting, or participating in the patrolling, picketing or blockading of, or the interference with, the entrances or exits of any kind or description used by the employees of the Plaintiff and other non-striking employers in connection with their work or in land, buildings, facilities or other property operated, owned or controlled by Plaintiff; provided, however, that this order shall not apply to the reserved entrance located at Bay and Stuart Streets, Jacksonville, Floradia, designated for use by Florida East Coast Railway Company employees only.

(b) Causing, compelling or inducing the employees of the Plaintiff or the employees of other non-striking employers who report for work at the Jacksonville Terminal Company to cease performing the duties of their employment.

(c) Interfering with employees of Plaintiff in the performance of their respective duties of their employment by fines or otherwise, or paying any benefit and giving any money or anything of value to any employee of Plaintiff who refuses a lawful order to perform services for Plaintiff in accordance with any collective bargaining agreement covering said services in, on or about Plaintiff's facilities, or supporting in any way any employee of Plaintiff who refuses to obey a lawful order or request to perform such services

(d) Interfering with the operations of and employment at the Jacksonville Terminal Company by any force, intimidation, violence or threats thereof.

3. That a day certain be fixed upon which defendants are required to show cause, if any they have, why they should not be permanently enjoined from committing the acts herein above complained of.

4. That a copy of this Complaint and the prayed for temporary restraining order be served on defendants in person.

5. That upon a final hearing of this cause, defendants be permanently enjoined from committing the acts herein above complained of.

6. That, on final hearing, Plaintiff may have damages against said defendants or some of them in such amount as the Court may deem to be just, as well as its costs in this action.

7. That Plaintiff have such other and further relief as the Court may deem proper and just.

McCarthy, Adams & Foote

By: _____

801 Atlantic Bank Building
Jacksonville, Florida 32202
Attorneys for Plaintiff

Of Counsel:

Daniel R. Coffman, Jr.
1623 Barnett Bank Building
Jacksonville, Florida 32202

AFFIDAVIT OF CECIL BATTON

State of Florida }
County of Duval }

Before me, an officer duly authorized to administer oaths this day personally appeared Cecil Batton, to me well known, who being by me first duly sworn, deposes and says:

That he is Superintendent of Transportation charged with the responsibility for the movement and switching of trains in the tracks and yards of Jacksonville Terminal Company. The employees in the Transportation Department are clerks, yardmasters, switchmen, conductors, engi-

neers, hostlers, firemen, interlocking towermen and telegraph operators, totaling 174 men in March of 1966, who performed 29,130 man hours of work and earned $91,032.20 wages.

On May 4, 1966 the employees of the Transportation Department observed the picket lines thrown up by F.E.C. Ry. striking employees. The functions of the Transportation Department were performed by retaining men on their jobs who were working when the pickets were stationed. These men can be retained only during the time permitted by the hours of service law. If the work of the Transportation Department is interrupted no passenger, mail or express trains could be operated into or out of the City of Jacksonville and a large percentage of the freight traffic would come to a standstill.

Further affiant sayeth not.

Dated this — day of May, A. D. 1966.

CECIL BATTON
Cecil Batton

Sworn to and subscribed before me
this — day of May, A. D. 1966.

Notary Public, State of Florida
at Large. My commission expires:
May 24, 1968
Bonded by National Surety Corporation

STATE OF FLORIDA }
COUNTY OF DUVAL } ss:

Before me, an officer authorized to administer oaths and take acknowledgements, personally appeared MARSHALL C. JENNETTE, to me well known and who being first duly sworn said on oath that he is the President and General Manager of the plaintiff corporation, Jacksonville Terminal Company; that he has read the above and foregoing allegations contained in the Complaint for injunctive relief and that all matters of fact stated therein are true and correct to his best knowledge and belief.

MARSHALL C. JENNETTE

Sworn to and subscribed before me
this — day of May, 1966,

Notary Public, State of Florida at Large
My Commission expires: _____

AFFIDAVIT OF ARTHUR C. HERRINGTON

Before me an officer authorized to administer oaths, this day personally appeared ARTHUR C. HERRINGTON, to me well known, who, being by me first duly sworn, deposes and says:

That he is Master Mechanic of Jacksonville Terminal Company, and charged with responsibility for the management, direction and operation of the mechanical department of Jacksonville Terminal Company, including inspection, maintenance, and servicing of railroad locomotives of Jacksonville Terminal Company and locomotives and cars of its tenant lines, ACL RR, SAL RR, So. Ry. and FEC Ry., and also the repair thereof and further inspection, maintenance service and repair of machinery, and mechanical equipment used in the operation of the railroad yards and facilities.

The employees in the mechanical department number approximately 215, who worked 40,703 man hours in March of 1966, earning wages for that period in a total of $117,328.33.

The crafts included in the mechanical department include: supervisors, electricians, carmen, sheet metal workers, machinists, helpers, laborers, and clerks, car cleaners, ice and water men.

The mechanical department, among other things, is currently servicing forty-four passenger trains daily, except on Sunday, when there are only forty-two trains. Of these trains, the FEC Ry. operates two trains daily except on Sunday, which are composed of one locomotive unit and two passenger cars, each. These FEC pasesnger cars, for the month of March, constituted .59 of one per cent of the passenger cars handled by Jacksonville Terminal Company during that period of time.

On May 4th when FEC pickets picketed Jacksonville Terminal Company premises, the mechanical department was able to operate only so long as it was able to hold its employees on duty who were working at the time.

Further affiant sayeth not.

Dated this — day of May, A. D. 1966.

ARTHUR C. HERRINGTON
Arthur C. Herrington

Sworn to and subscribed before me
this — day of May, A. D. 1966.

Notary Public, State of Florida
at Large.

My commission expires: May 24, 1968.
Bonded by National Surety Corporation

AFFIDAVIT OF ALFRED G. JOHNSON

STATE OF FLORIDA }
COUNTY OF DUVAL }

Before me, an officer duly authorized to administer oaths this day personally appeared ALFRED G. JOHNSON to me well known, who being by me first duly sworn deposes and says:

That he is Operations Manager of Railway Express Agency, Incorporated, which operates a railway express terminal in the City of Jacksonville on land which it leases from Jacksonville Terminal Company, and which is adjacent to the yards and track facilities of said Jacksonville Terminal Company, and said express terminal of REA does not have a rail connection with the interstate rail carriers except by the rails and tracks of said Jacksonville Terminal Company.

Ralway Express Agency, Incorporated has approximately 300 employees who worked 59,878 man hours in the month of March, 1966;

The actual volume of shipments of express during said period of time both in and out and for the whole State of Florida was 2,218,992 pieces; and all of such express shipments were of necessity handled through its Jacksonville office and the facilities of Jacksonville Terminal Company.

All of the express business aforesaid was handled by REA for the account of ACL RR Co. and SAL RR Co. No express business was handled by REA for either F.E.C. Ry. Co. or So. Ry. system.

The volume of express matter handled by REA is largely perishable goods, such as ferns, flowers, fish and fruit; the delay in the handling of which would result in great loss to the value of such express matter.

During the time the premises of Jacksonville Terminal Company were picketed by striking employees of F.E.C.

Ry. Co. on or about May 4th delivery of express cars was delayed as follows:

six cars from ACL #375,
two cars from ACL #95,
one car from SAL #38,
one car from SAL #36,
three cars from ACL #76, and
three cars from ACL #38;

the daily average of railway express cars handled by REA is 64 cars, all of which must be delivered to and taken away from the express terminal of REA over the tracks and yards and by the employees of Jacksonville Terminal Company.

An interruption of the flow of express business into and out of the Jacksonville express terminal would result in irreparable injury and damage to REA and to its shipping customers.

Further affiant sayeth not.

Dated this 9th day of May, A. D. 1966.

ALFRED G. JOHNSON
Alfred G. Johnson

Sworn to and subscribed before me
this 9th day of May, A. D. 1966.

(signature illegible)

Notary Public, State of Florida at Large.
My Commission expires May 24, 1968
Bonded by National Surety Corporation

AFFIDAVIT OF G. G. JONES

STATE OF FLORIDA }
COUNTY OF DUVAL }

Before me, an officer duly authorized to administer oaths, this day personally appeared G. G. JONES, to me well known, who being by me first duly sworn, deposes and says:

That he is General Baggage and Mail Agent for Jacksonville Terminal Company responsible for receiving, loading and unloading, sorting, classifying, directing and handling United States mail and baggage, including remains of deceased persons, for all of the passenger, mail and express trains that arrive at and depart from the City of Jacksonville. This department employs approximately 225 people, including supervisors, tractor drivers, separators, loaders and porters. For the month of March 1966 these employees worked 37,141 man hours and earned $100,476.00 in wages. During the month of March this department handled 1,930,614 sacks of U. S. mail. This constitutes about 95% of all U. S. mail coming into or going out of the State of Florida, or within Duval County.

Included in baggage for the month of January 1966, (the only month in which this statistic was separated) were 569 remains of deceased persons; and 32,089 pieces of checked baggage; there was no other baggage handled of which a direct record was made by affiant.

During the May 4th 1966 picketing of Jacksonville Terminal Company premises by striking employees of F.E.C. Ry. Co. the employees of the Baggage and Mail Department refused to cross the picket lines and in due time the work in the department would ultimately have broken down completely.

A part of the mail handling above referred to, is performed for the U. S. Post Office Department, and not for the terminal Company's tenant lines, this is mail which Jacksonville Terminal Company's employees load or un-

load from trucks because of the lack of post office facilities for handling this business. This work for March 1966 amounted to an average of 23,241 sacks per day or 720,471 for the month.

No mail or baggage is handled for the F.E.C. Ry. Co.

The operation of the Baggage and Mail Department operates twenty hours each day. In the event of an interruption of service mail would accumulate that could not be handled, delivered or dispatched. It would probably require six days to recover or dispose of the mail which would accumulate in one day's interruption. In addition to the difficulty of working accumulated mail, there would be a problem of coordinating and adjusting the electronically controlled mail handling equipment.

Further affiant sayeth not.

Dated this 9th day of May, A. D. 1966.

G. G. JONES
G. G. Jones

Sworn to and subscribed before me
this 9th day of May, A. D. 1966.

(signature illegible)

Notary Public, State of Florida at Large.
My commission expires May 24, 1968
Bonded by National Surety Corporation

Exhibit B

IN THE CIRCUIT COURT, FOURTH JUDICIAL CIRCUIT,
IN AND FOR DUVAL COUNTY, FLORIDA

CASE No. 66-2941-E

DIVISION B

JACKSONVILLE TERMINAL COMPANY, a corporation,
Plaintiff,

v.

BROTHERHOOD OF RAILROAD TRAINMEN, a labor organization, et al. *Defendants*.

Answer

Comes now the Brotherhood of Railroad Trainmen, the Order of Railway Conductors and Brakemen, and Brotherhood of Locomotive Firemen and Enginemen, and for answer to the complaint say:

1. Defendants admit the allegations of paragraph 1 of the complaint.

2. Defendants admit that they are railway labor organizations, national in scope, that Ray Moore is Deputy Vice President of the defendant Brotherhood of Railroad Trainmen and deny the remaining allegations not herein specifically admitted.

3. The defendants deny the allegations of paragraph 3, the plaintiff itself having asserted in the United States District Court, the Court of Appeals for the Fifth Circuit and the Supreme Court of the United States that the Federal courts have exclusive jurisdiction over the subject matter of this dispute.

4. The defendant labor organizations admit that they have a so-called major dispute with the Florida East Coast Railway Company and they have directed lawful picketing including the premises of the plaintiff, in con-

nection with that dispute and deny the remaining allegations not herein admitted.

5. Defendants admit that the Brotherhood of Railroad Trainmen and Order of Railway Conductors have working agreements with the plaintiff and the Brotherhood of Locomotive Firemen and Enginemen have no working agreement with the plaintiff. The defendants deny the remaining allegations of paragraph five.

6. Defendant Brotherhood of Railroad Trainmen admits that its members picketed certain locations at the property of the plaintiff commencing at or about 3:05 a.m. on May 4, 1966 and the defendants Order of Railway Conductors and Brakemen and Brotherhood of Locomotive Firemen and Enginemen deny that they or any of their members picketed certain locations around the property of the plaintiff. The defendants further admit that they are on legal strike against the Florida East Coast Railway and have the right under federal law to resume peaceful picketing at locations including those previously picketed at or near the property of the plaintiff. The defendants deny those allegations of paragraph 6 not herein specifically admitted.

7. Defendants admit that the railroad employees of the Atlantic Coast Line Railroad, and Seaboard Air Line Railroad Company, exercised their right under federal law to honor the picket lines of the defendant Brotherhood of Railway Trainmen and the defendants deny those allegations in paragraph 7 of the complaint not herein specifically admitted.

Further answering the allegations of paragraph 7, defendants say that the plaintiff and its employees are involved in the dispute between the Florida East Coast Railway Company and its employees; that Florida East Coast Railway Company daily runs its trains with striker replacement crews upon the premises of the plaintiff,

that plaintiff and its employees render day-to-day services to the Florida East Coast Railway which are essential to its operations, that the facilities of the plaintiff and the services of its employees are an integral part of Florida East Coast Railway operations. Further defendants allege that the plaintiff has made common cause with Florida East Coast Railway Company by assisting its operations during a strike, and that plaintiff's employees desire to, and have the right under applicable federal law, to make common cause with the striking employees of Florida East Coast Railway Company by refusing to render services for Florida East Coast Railway Company. See *Brotherhood of Locomotive Firemen and Enginemen vs. Florida East Coast Railway Co.*, 346 F. 2d 673 (5th Cir. 1965).

8. Defendants admit that an almost identical action was instituted by the plaintiff and others in the United States District Court for the Middle District of Florida, Case No. 66-357-Civ-J and subsequent allegations concerning the above specified litigation, the plaintiff alleging exclusive federal jurisdiction over the subject matter of the litigation and the Court of Appeals for the Fifth Circuit concluding that it was without jurisdiction *to enter* an injunction.

9. Defendants admit that defendant Ray Moore is a Deputy Vice President of the defendant Brotherhood of Railroad Trainmen and deny the remainder of paragraph 9 insofar as it pertains to the testimony of defendant Ray Moore.

10. Defendants deny the allegations of paragraph 10 of the complaint and allege that the plaintiff's employees are part of the major dispute existing between defendants and the Florida East Coast Railway Company.

11. Defendants deny the allegations of paragraph 11, 12 and 13 of the plaintiff's complaint and deny all allegations of plaintiff's complaint not specifically admitted by the defendants.

FIRST DEFENSE

The complaint fails to state a cause of action.

SECOND DEFENSE

The plaintiff and the Florida East Coast Railway Company are common carriers engaged in interstate commerce, and are subject to the Interstate Commerce Act (49 USC § 1, et seq.). Both are subject to the Railway Labor Act, 45 USC § 151, et seq.

The plaintiff's business, the defendants' conduct, and the relationship between the parties all involve interstate commerce, all are regulated by acts of the United States Congress, and all involve areas of jurisprudence preempted by federal legislation in which state regulation can play no part (with the one exception of violence, not here alleged). *See* for instance: *San Diego Council* v. *Garmon,* 359 US 236, 79 S. Ct. 773 (1959); *Teamsters Union* v. *Morton,* 377 U.S. 252, 12 L.Ed. 2d 280 (1965); *United Mine Workers* v. *Gibbs,* 16 L.Ed. 2d 218 (1966).

THIRD DEFENSE

The defendants and the Florida East Coast Railway Company are engaged in a "major dispute" under the terms of the Railway Labor Act, 45 USC § 151, et seq. involving unilateral changes by Florida East Coast Railway in rules, rates of pay and working conditions. The procedures of the Railway Labor Act have been exhausted and the parties are entitled to resort to "self-help" (*BLE* v. *B & O,* 372 US 284 (1963)) to the extent permitted and within the limitations of federal law.

FOURTH DEFENSE

It has been judicially determined in litigation between the parties to this cause that the conduct of defendants here involved "arises out of a labor dispute" within the

meaning of applicable federal law, and plaintiff is estopped to assert to the contrary in this cause. *Atlantic Coast Line Railroad Company, et al. vs. Brotherhood of Railroad Trainmen, et al.*, Case No. 23659, United States Court of Appeals For The Fifth Circuit, decided May 24, 1966.

FIFTH DEFENSE

The conduct of the defendants is legal conduct under applicable federal law.

(a) The employees of connecting carriers have a right under federal law to refuse to render service to a struck carrier, to participate in and become a part of the major dispute with the struck carrier, and may make common cause with their brother employees on the struck carrier. *BLF&E vs. FEC*, 346 F. 2d 673.

(b) Even if the conduct in question might constitute a "secondary boycott", such conduct is not prohibited conduct under the Railway Labor Act. *I.B.E.W. vs. N.L.R.B.*, 350 F. 2d 791 (D.C. Cir. 1965).

(c) If defendants' conduct is subject to regulation under the National Labor Relations Act, rather than the Railway Labor Act, it does not constitute illegal conduct under either act. It is lawful and proper for the striking employees of Florida East Coast Railway to make a peaceful and orderly appeal "to neutral employees whose tasks aid the employer's everyday operations", *Local 761, I.U. of E.R. & M Workers vs. N.L.R.B.*, 366 U.S. 667, or to persons who are "contributing to the operations which the strike is endeavoring to halt" by furnishing "day-to-day service essential to the employer's regular operations", *United Steelworkers* v. *N.L.R.B.*, 376 U.S. 492.

Fifth Defense

State courts are preempted from determining, even under applicable federal law, whether or not the conduct in question is legal or illegal conduct. *Local Union No. 25* v. *New York, New Haven and Hartford Railroad Co.* (1956) 350 U.S. 155, 76 S. Ct. 227; *San Diego Council* v. *Garmon,* 359 U.S. 236; *Scherer & Sons, Inc.* v. *International Ladies Garmet Workers Union,* 142 So. 2d 290, 1962; *United Steelworkers* v. *Nubar Tool and Eng. Co.* 148 So. 2d 45 (2nd Dist. 1962); *Local 675, Operating Engineers* v. *Meekings,* 175 So. 2d 59 (2nd Dist. 1965). Cf., *Manion, et al.* v. *Kansas City Terminal Railway Co.* (1957) 353 U.S. 927, reversing state court injunction reported at 297 S.W. 2d 31.

Sixth Defense

The provisions of the Norris-LaGuardia Act, 29 USC § 101, et seq. are applicable to deprive this court of jurisdiction to enter an injunction in this case.

Seventh Defense

The conduct of the defendants is protected by the First Amendment and Fourteenth Amendment of the United States Constitution. *Thornhill* v. *State of Alabama,* (1940) 310 U.S. 88, 60 S. Ct. 879.

Eighth Defense

The conduct of the defendants would not constitute an illegal secondary boycott under Florida law, even if said law applied to this case.

WHEREFORE, defendants respectfully pray that this Court dismiss the plaintiff's complaint for an injunction and damages, with prejudice.

RUTLEDGE & MILLEDGE
601 Flagler Federal Building
111 N.E. First Street
Miami, Florida 33132

ALLAN MILLEDGE

BECKHAM & MCALILEY
1010 Concord Building
Miami, Florida

TOM MCALILEY

Attorneys for Defendants

HORTON & SCHWARTZ
308 Concord Building
Miami, Florida
Of Counsel

Exhibit C

IN THE CIRCUIT COURT OF THE FOURTH JUDICIAL CIRCUIT
IN AND FOR DUVAL COUNTY, FLORIDA, IN CHANCERY

DIVISION B

No. 66-2941-E

JACKSONVILLE TERMINAL COMPANY, a corporation, *Plaintiff*,

v.

BROTHERHOOD OF RAILROAD TRAINMEN, an unincorporated association in its own right and as representative of its membership, A. L. GRAVES and C. H. WRIGHT, *et al.*, Defendants.

Amended Complaint for Injunction

Comes now Jacksonville Terminal Company, Plaintiff, by and through its undersigned attorneys, and respectfully shows to the Court as follows:

1. Plaintiff is a corporation organized and existing under the laws of the State of Florida, with its principal place of business in Jacksonville, Duval County, Florida. Plaintiff is engaged in the railroad terminal business at Jacksonville, Florida, where it owns and operates railroad yards and a railway station that provides such services for the following railroads: Atlantic Coast Line Railroad Company; Seaboard Airline Railroad Company; Florida East Coast Railway Company; and Southern Railway System.

2. The Defendants are an unincorporated labor organization; the defendant Ray Moore is Deputy Vice President of the defendant Brotherhood of Railroad Trainmen and generally is in charge of promoting the acts and things hereinafter alleged, other defendants are members of said labor organizations or individuals participating in concert with said organizations in the unlawful acts hereinafter set

forth. The members of the above-captioned labor organizations are so numerous as to make it impracticable to bring them all before the Court.

3. This action arises under the Constitution and Laws of the State of Florida.

4. The defendant Brotherhoods are presently on strike against the Florida East Coast Railway Company and in the course of said strike have directed primary and lawful picketing against said railroad at various locations throughout the State of Florida. The plaintiff in 1963 designated a separate entrance in and to its premises for use exclusively by the employees of the Florida East Coast Railway Company.

5. At the present time the plaintiff has collective bargaining contracts with the defendants, Brotherhood of Railroad Trainmen and Order of Railway Conductors and Brakemen. Said collective bargaining contracts are presently in full force and effect and there is no dispute thereunder, major or minor, within the meaning of the Railway Labor Act. None of plaintiff's employees are represented by the defendant, Brotherhood of Locomotive Firemen and Enginemen. None of the defendants named individually above are employees of plaintiff and plaintiff further alleges that it has no labor dispute with any of the above named defendants and that no labor demands have been made to plaintiff by any of its employees or their respective bargaining agents.

6. On to-wit, May 4, 1966, the defendant Brotherhoods, their officers, agents and employees commenced picketing and patrolling the premises of the plaintiff at places other than the entrance designated for use by Florida East Coast Railway employees to the end that plaintiff's premises were completely surrounded. The defendants and their agents, officers and employees have coerced and threatened with physical injury and property damage employees of

plaintiff for the purpose of intimidating said employees into refusing to perform the duties of their employment. Said pickets identified themselves as members of the defendant, Brotherhood of Railroad Trainmen and carried placards which state that they are on legal strike against the Florida East Coast Railroad. Plaintiff is informed and believes that all three of the defendant Brotherhoods are on strike against the Florida East Coast Railroad Company and further believes that the defendants other than the Brotherhood of Railroad Trainmen, unless hereby enjoined, will continue or commence picketing of plaintiff's premises.

7. As a result of the acts of defendants the employees of plaintiff, Atlantic Coast Line Railroad Company and the Seaboard Airline Railroad Company, none of whom were or are in any wise involved in the dispute between defendants and the Florida East Coast Railway Company, were induced, encouraged and intimidated thereby to honor said pickets and to refuse to honor their respective work contracts by reporting to work. Plaintiff further alleges that defendants further counseled, advised and persuaded plaintiff's employees to not report to work, even though plaintiff's employees were and are not involved in any dispute with plaintiff regarding their working agreement.

8. As a result of the above and foregoing acts of defendants, plaintiff and other railroads filed an action for injunctive relief and damages in the United States District Court for the Middle District of Florida on May 4, 1966, being case No. 66-357-Civ-J. As a result of said Complaint the Hon. William A. McRae, Jr., United States District Judge issued a Temporary Restraining Order on May 4, 1966, and thereafter, on May 10, 1966, after a full evidentiary hearing, entered a preliminary injunction enjoining the acts of defendants. Thereafter defendants on to-wit, May 18, 1966, applied for and obtained from the United States Court of Appeals for the Fifth Circuit an

Order staying the preliminary injunction. Thereafter said Court sitting in Atlanta, Georgia on May 23, 1966, entered its Order dissolving said preliminary injunction effective eleven o'clock A.M., May 24, 1966, on the grounds that the District Court was without jurisdiction. Plaintiff is informed and verily believes that said picketing will be resumed immediately and their presence is imminent unless this Court grants the relief herein sought.

9. On numerous occasions agents of defendants have stated that the avowed object of said picketing is to force plaintiff to cease furnishing services that are essential to the interchange of freight and passenger traffic with the Florida East Coast Railway Company. Agents of defendants have stated that, if the plaintiff does embargo traffic to and from the Florida East Coast Railway Company, the picketing will not be resumed. For plaintiff to so embargo such traffic would violate the laws of the State of Florida.

10. There is no dispute between plaintiff and its employees or between plaintiff and defendants which is subject to the provisions of the Railway Labor Act.

11. The provisions of the National Labor Relations Act as amended, 29 U.S.C.A. Sec. 141 et seq. are not applicable to the instant situation and the same cannot be said to be "arguably" within the meaning and application of said Act in that plaintiff and defendants are expressly excepted therefrom. 29 U.S.C.A. Sec. 152(2)(3).

12. The said acts of defendant, if resumed, will:

(a) constitute an illegal secondary boycott of plaintiff's premises;

(b) are an illegal and unwarranted interference with the business and contractual relationships of plaintiff;

(c) threaten to unjustifiably restrain plaintiff from carrying on its business operations;

(d) force plaintiff to violate its statutory duties to furnish transportation services under the laws of the State of Florida and are contrary to the public policy, safety and welfare of the State of Florida as pronounced in the Constitution and laws of the State of Florida;

(e) constitute unlawful restrictions on trade and commerce under the laws of the State of Florida;

(f) will result in the taking of plaintiff's property without due process of law in violation of the Constitution and laws of the State of Florida.

(g) constitute a breach of the peace and an illegal interference with the rights of plaintiff's employees to earn a living.

13. If the threatened picketing is renewed, the plaintiff, its employees, many industries in the State of Florida and the public at large will suffer immediate and irreparable harm all of which appears from the affidavits of Arthur C. Herrington, Alfred G. Johnson, G. G. Jones, and Cecil Batton, attached to the original complaint and by this reference made a part of this complaint.

14. Jurisdiction of this matter not being proper in the Federal Courts, this Court has jurisdiction of the subject matter and the parties and is the only forum that can grant plaintiff relief and prevent the great and irreparable damages that will flow with certainty from defendants actions. Plaintiff has no other remedy. Far greater injury will be inflicted on plaintiff and the citizens of the State of Florida by denial of the relief sought herein than can result to the defendants by the granting of said relief prayed for herein.

WHEREFORE, Plaintiff prays:

1. That the Court issue a preliminary injunction made permanent on final hearing, and pending hearing and determination of plaintiff's motion for a preliminary injunc-

tion the Court issue a temporary restraining order on the grounds that immediate, irreparable injury, loss and damage will result to plaintiff before notice can be served and a hearing had on said Motion for Preliminary Injunction.

2. That the temporary restraining order, preliminary injunction and permanent injunction enjoin and restrain the defendants individually and their officers, agents, servants, employees, representatives, members, attorneys and all other persons acting at the direction of or in active concert or participation with them, and all persons receiving notice of any such orders of the Court from:

(a) Ordering, directing, authorizing, recommending, sanctioning, starting, continuing, permitting, or participating in the patrolling, picketing or blockading of, or the interference with, the entrances or exits of any kind or description, used by the employees of the Plaintiff and other non-striking employers in connection with their work or in land, buildings, facilities or other property operated, owned or controlled by Plaintiff; provided, however, that this order shall not apply to the reserved entrance located at Bay and Stuart Streets, Jacksonville, Florida, designated for use by Florida East Coast Railway Company employees only.

(b) Causing, compelling or inducing the employees of the Plaintiff or the employees of other non-striking employers who report for work at the Jacksonville Terminal Company to cease performing the duties of their employment.

(c) Interfering with employees of Plaintiff in the performance of their respective duties of their employment by fines or otherwise, or paying any benefit and giving any money or anything of value to any employee of Plaintiff who refuses a lawful order to perform services for Plaintiff in accordance with any collective bargaining agreement covering said services in, on or about Plaintiff's facilities,

or supporting in any way any employee of Plaintiff who refuses to obey a lawful order or request to perform such services.

(d) Interfering with the operations of and employment at the Jacksonville Terminal Company by any force, intimidation, violence or threats thereof.

3. That a day certain be fixed upon which defendants are required to show cause, if any they have, why they should not be permanently enjoined from committing the acts herein above complained of.

4. That a copy of this Complaint and the prayed for temporary restraining order be served on defendants in person.

5. That upon a final hearing of this cause, defendants be permanently enjoined from committing the acts herein above complained of.

6. That, on final hearing, Plaintiff may have damages against said defendants or some of them in such amount as the Court may deem to be just, as well as its costs in this action.

7. That Plaintiff have such other and further relief as the Court may deem proper and just.

McCarthy, Adams & Foote
By Adam G. Adam, II
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Jacksonville, Florida 32202
Attorneys for Plaintiff

Of Counsel:
Daniel R. Coffman, Jr.
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Jacksonville, Florida 32202

Exhibit D

IN THE CIRCUIT COURT OF DUVAL COUNTY, FLORIDA

DIVISION B

No. 66-2941-E

JACKSONVILLE TERMINAL COMPANY, a corporation,
Plaintiff(s),

v.

BROTHERHOOD OF RAILROAD TRAINMEN, *etc., et al.,*
Defendant(s).

Order

After due notice by or to all parties affected, a hearing was held before the court with respect to the matters disposed of by this order.

Upon consideration, it is ORDERED that:

1. The plaintiff has leave to file the amended complaint file-marked by the clerk May 27, 1966, joining as additional defendants A. L. Groves and C. H. Wright (in addition to all the defendants named in the caption of the original complaint). That amended complaint is deemed filed with leave of court as of May 27, 1966.

2. The answer file-marked by the clerk May 27, 1966, is deemed the answer of all defendants except A. L. Groves and C. H. Wright to that amended complaint, any allegations made in that amended complaint that were not made in the original complaint being deemed denied by those defendants.

Jacksonville, Florida, May 28, 1966.

(s) ROGER J. WAYBRIGHT
Judge

Copies: Adam G. Adams II
Allan Milledge, 601 Flagler Federal Building,
111 N. E. First St., Miami, Florida 33132
Thomas W. McAliley, 1010 Concord Building,
Miami, Florida

Exhibit E

IN THE CIRCUIT COURT OF THE FOURTH JUDICIAL CIRCUIT
IN AND FOR DUVAL COUNTY, FLORIDA, IN CHANCERY

DIVISION B

No. 66-2941-E

JACKSONVILLE TERMINAL COMPANY, a corporation, *Plaintiff*,

v.

BROTHERHOOD OF RAILROAD TRAINMEN, an unincorporated association in its own right and as representative of its membership and Ray Moore and Lowell Kennedy, individually and as officials of said brotherhood; and the members of said organization;

ORDER OF RAILWAY CONDUCTORS AND BRAKEMEN, an unincorporated association in its own right and as representative of its membership and T. C. Boland, individually and as an official of said brotherhood; and the members of said organization;

BROTHERHOOD OF LOCOMOTIVE FIREMEN AND ENGINEMEN, an unincorporated association in its own right and as representative of its membership and J. E. Eason, individually and as an official of said brotherhood; and the members of said organization;

A. L. GRAVES; C. H. WRIGHT, *Defendants*.

Order for Temporary Injunction

This cause being heard on due notice upon plaintiff's application for a temporary injunction, and the Court having considered the affidavits attached to the original Complaint and having heard oral evidence in open court, and having heard oral argument from all counsel, the Court makes the following findings of fact and reaches the following conclusions of law:

1. Plaintiff is a corporation organized and existing under the laws of the State of Florida, with its principal place

of business in Jacksonville, Duval County, Florida. Plaintiff is engaged in the railroad terminal business at Jacksonville, Florida, where it owns and operates as a common carrier with railroad yards and a railway station that provides services for various railroads and Duval County, Florida, industries.

2. The defendants are unincorporated labor organizations; the defendant Ray Moore is Deputy Vice President of the defendant Brotherhood of Railroad Trainmen and generally is in charge of promoting the acts and things hereinafter enjoined; other defendants are members of said labor organizations or individuals participating in concert with said organizations in the unlawful acts hereinafter enjoined.

3. This action arises under the Constitution and laws of the State of Florida and this Court has jurisdiction of the subject matter and of the parties.

4. On May 4, 1966, at or about 4:00 o'clock a.m., the defendant Brotherhood of Railroad Trainmen caused picket lines to be put up around the premises of plaintiff, Jacksonville Terminal Company ("Terminal Company") at numerous locations surrounding said premises. Said pickets patrolled at all entrances and exits by rail, foot or vehicle and resulted in a substantial cessation of the activities and business by Jacksonville Terminal Company and caused the employees of said Terminal Company to fail to report to work. All defendants have announced their intention to cause such picketing and patrolling of the premises of plaintiff to be renewed unless this temporary injunction issue.

5. Counsel for defendants announced at the beginning of taking of evidence in this case and the Court finds that if the picketing were resumed, it would result in a virtual cessation of activities not only of the Terminal Company but also of numerous industries in Duval County and throughout the remainder of the State of Florida. The picketing, if resumed, would adversely affect all of the

people who are served by and do business with plaintiff and all railways served by the plaintiff. It would, further, adversely affect an entire economic area, from Duval County to Key West, Florida, and would cause economic strangulation of the entire state. The avowed purpose of the picketing is to cause the plaintiff and its employees to cease furnishing services to the Florida East Coast Railway Company, against whom the defendant Brotherhoods are now on strike and, thus, to bring the operations of the F.E.C. to a halt; the effect of the picketing is considerably more broad, as above stated.

6. The decision of this Court is not made upon the basis of violence. There is no evidence in the record of any violence or threat of violence involved in the picketing.

7. The Court concludes that the past and threatened picketing as described above is in violation of the law of the State of Florida and that this Court has the jurisdiction to enjoin the threatened picketing on that basis. The past and threatened picketing did and will constitute economic pressure in the nature of a secondary boycott which is illegal under Florida law. Further, the picketing seeks to force the plaintiff to violate its duties and obligations as a carrier under the Florida Transportation Act, F.S. § 351.12, 351.14, 351.15, 351.16, 351.17 and 351.19, and seeks to coerce plaintiff into agreeing to embargo the FEC in violation of the Restraint of Trade Laws of this State. Chapter 542, Florida Statutes. Finally, the past and threatened picketing did and will unjustifiably interfere with and interrupt plaintiff's constitutional right to carry on its business, and said picketing constitutes the independent tort of unjustifiable interference with the contractual relationships between plaintiff and its shippers and between plaintiff and its employees. Plaintiff has been and will be subjected to irreparable injury for which no adequate remedy at law exists. It is, therefore,

ORDERED AND DECREED that the defendants, Brotherhood of Railroad Trainmen, Ray Moore, Lowell Kennedy, Order

of Railway Conductors and Brakemen, T. C. Boland, Brotherhood of Locotomotive Firemen and Enginemen, and J. E. Eason, individually, and their officers, agents, servants, employees, representatives, members, attorneys and all other persons acting at the direction of or in active concert or participation with either the Brotherhood of Railroad Trainmen, the Order of Railway Conductors and Brakemen, or the Brotherhood of Locomotive Firemen and Enginemen, and all persons receiving notice of any such orders of the Court, are temporarily enjoined and restrained from:

(a) Picketing the properties owned or operated by plaintiff in Jacksonville, Duval County, Florida, except at the reserved entrance located at Bay and Stuart Streets, Jacksonville, Florida, designated for use by FEC employees.

(b) Causing, directing, authorizing, recommending, sanctioning, or participating in the patrolling, picketing, or blockading of the entrances or exits used by the employees of plaintiff in connection with their work or in connection with plaintiff's land, buildings, facilities or other property operated, owned, or controlled by plantiff; provided, however, that this order shall not apply to the reserved entrance located at Bay and Stuart Streets, Jacksonville, Florida, designated for use by FEC employees;

(c) Causing or inducing the employees of plaintiff who report for work at the Terminal Company to cease performing the duties of their employment;

(d) Interfering in any way with the operation of plaintiff's properties by plaintiff.

This temporary injunction shall become effective upon the filing by plaintiff and acceptance by the Clerk of this Court of a good and sufficient bond in favor of defendants in the amount of $25,000.00.

DONE AND ORDERED in Chambers at Jacksonville, Duval County, Florida, this 30th day of May, 1966.

/s/ ROGER J. WAYBRIGHT
Circuit Judge

Exhibit F

IN THE UNITED STATES DISTRICT COURT FOR THE MIDDLE DISTRICT OF FLORIDA, JACKSONVILLE DIVISION

No. 66-357-Civ.-J

ATLANTIC COAST LINE RAILROAD COMPANY, a corporation, JACKSONVILLE TERMINAL COMPANY, a corporation, and SEABOARD AIR LINE RAILROAD COMPANY, a corporation, *Plaintiffs*,

v.

BROTHERHOOD OF RAILROAD TRAINMEN, an unincorporated association in its own right and as representative of its membership and Ray Moore and Lowell Kennedy, individually and as officials of said brotherhood; and the members of said organization;

ORDER OF RAILWAY CONDUCTORS AND BRAKEMEN, an unincorporated association in its own right and as representative of its membership and T. C. Boland, individually and as an official of said brotherhood; and the members of said organization;

BROTHERHOOD OF LOCOMOTIVE FIREMEN AND ENGINEMEN, an unincorporated association in its own right and as representative of its membership and J. E. Eason, individually and as an official of said brotherhood; and the members of said organization, *Defendants*.

Complaint

1. This Court has jurisdiction of this suit because this is an action arising under the Constitution and laws of the United States regulating interstate commerce, and the amount in controversy exceeds the sum of $10,000.00, exclusive of interest and costs. The jurisdiction of this Court is specifically invoked under Sections 1331 and 1337 of the Judicial Code (28 U.S.C. Sections 1331 and 1337), the Interstate Commerce Act (49 U.S.C. Section 1, et seq.) and Rule 23(a) of the Federal Rules of Civil Procedure.

2. Plaintiff Atlantic Coast Line Railroad Company (hereinafter called "Coast Line") is a corporation organized under the laws of the State of Virginia and is authorized to do business in the State of Florida. Plaintiff Seaboard Air Line Railroad Company (hereinafter called "Seaboard") is a corporation organized under the laws of the State of Virginia and is authorized to do business in the State of Florida. Jacksonville Terminal Company (hereinafter called Terminal Company) is a railroad corporation organized and existing under the laws of the State of Florida and operates and maintains a railroad terminal, yards and passenger station in the City of Jacksonville, Duval County, Florida, and, as a common carrier, is likewise subject to the Interstate Commerce Act. Plaintiffs, Coast Line and Seaboard, hold themselves out, and are required by law, to provide common carrier transportation service to the public in accordance with their respective tariffs, schedules, etc., on file with the Interstate Commerce Commission and the Florida Public Utilities Commission. Said Plaintiffs collectively operate in many states and together with other railroads provide regular and extensive service between points in Florida and the rest of the United States and adjacent foreign countries and handle extensive freight, passengers, mail and express traffic between many points requiring joint service to and from the State of Florida over the facilities of the Jacksonville Terminal Company, a Florida corporation.

3. Plaintiffs, Coast Line and Seaboard, as common carriers, serve various communities, industries, and plants by furnishing to said communities, industries and plants the supplies and materials vital for their existence through freight, including perishables, passenger and mail service. Plaintiff Terminal Companies' facility is operated in order to effect and is essential to the physical interchange of railroad business between the *Atlantic Coast Line Railroad Company, Seaboard Air Line Railroad Company* and various other railroads, who, collectively, operate in many

states, and together with other railroads provide regular and extensive service between points in Florida and the rest of the United States, and handle extensive freight, passenger, mail and express traffic between many points requiring joint service through the State of Florida by way of the plaintiff Terminal Company. Said operation of the Terminal Company facility is governed by an Operating and Guaranty Agreement by and between the foregoing and various other railroads which was approved and authorized by the Interstate Commerce Commission on or about November 19, 1947. Plaintiffs allege that the interruption of their operation will be in violation of their constitutional and property rights. Plaintiffs will be unable to handle the daily shipments of U. S. mail, baggage, express, fruits, fresh vegetables, citrus fruits and other food and other articles of commerce, as well as passenger service. Such interruption will create irreparable damage not only to plaintiffs but to the United States Government and countless businesses, industries, individuals and said operating railroads. The interruption of plaintiffs' facilities and operations will be contrary to the purpose and requirements of The Interstate Commerce Act, 49 USC Sections 1(4) and 1(11), and comparable provisions of the Florida Statutes and will prevent plaintiffs from fulfilling their common carrier obligations to the public. The failure to provide common carrier services required by law by subject plaintiffs to damages, fines and penalties.

4. Defendants are unincorporated labor organizations and other defendants are either members of said labor organizations holding the offices captioned above or individuals participating in concert with said organizations in the unlawful acts hereinafter set forth. The members of the above captioned labor organizations are so numerous as to make it impracticable to bring them all before the Court.

5. The defendants are employed or were formerly employed by the Florida East Coast Railway Company and

are engaging in a dispute with the Florida East Coast Railway Company. Neither plaintiff nor any of its employees are involved in said dispute. The defendant brotherhoods are on strike against the Florida East Coast Railway Company, and in the course of said strike are picketing against said railroad at various locations in the State of Florida.

6. On May 4, 1966, at or about 3:00 A.M., the defendant brotherhoods, their officers, agents, representatives and members and others herein named defendants commenced picketing the premises of the plaintiff, Jacksonville Terminal Company, at places other than the entrance designated for entrance for Florida East Coast Railway employees only, and that as a result thereof plaintiff's employees, who are not in any way involved in said dispute, have been induced thereby to refuse and have refused to report for duty as employees of plaintiff and have refused to perform services for plaintiff. Said defendants have also commenced picketing at various places which are under the sole control and operation of the Coast Line and Seaboard. There is no justification for the defendant to picket at any other place than those designated for the entrance of Florida East Coast Railway employees only, as the said Florida East Coast Railway Company has substantial facilities in St. Augustine, Florida, as well as throughout the State of Florida, and the defendants can convey their message to the proper interested persons without disturbing operations of plaintiff's railroad terminal yard and passenger station.

7. The unlawful work stoppage, slowdown and interruption of the plaintiff railroads resulting from the acts of defendants as above alleged unless restrained or enjoined by this Court, will interfere with the movement of passengers, mail, freight and express lading, including products of industry and food and other lading essential to the public health and safety in interstate and intrastate

over the Coast Line and Seaboard lines and the Terminal Company connecting lines of railroad, contrary to the public interest and national welfare. If said unlawful acts continue, they will obstruct, hinder, and delay the interstate commerce over railroads and connecting lines. Such unlawful acts, if continued, will also cause irreparable damage to plaintiffs in the following particulars: substantial monetary amounts in direct wage costs, losses from using supervisory personnel to perform the aforesaid duties unlawfully refused by defendants, and revenue losses arising from plaintiffs being prevented from adequately servicing businesses and industries.

8. The Norris-LaGuardia Act (29 USC § 101, *et seq.*) does not apply. There is no labor dispute here involved in this case between the plaintiffs and defendants, nor do plaintiffs and defendants stand in a relation of employer and employee. Plaintiffs are not involved in any dispute with the defendants. Any claim that the actions of the defendants constitute merely "patrolling" within the meaning of 29 USC Section 104 is a pretense or a method of involving fraud within the meaning of said statute. Defendants' purpose and plan is not simply to advise the public of their dispute with Florida East Coast Railway Company but rather to prevent effectively the use of Terminal Companies' facility by plaintiffs and their respective employees in the pursuit of plaintiffs' respective businesses.

9. Plaintiff alleges that unless a temporary restraining order and injunction is issued as prayed herein, immediate, substantial, and irreparable injury will result in and to the property and business of plaintiff, and to the traveling and shipping public that they are required by law to serve. Plaintiffs have no plain speedy or adequate remedy at law. Plaintiff is informed and believes that the aforementioned illegal actions of the defendants will be continued unless the relief prayed for is granted. Far greater

injury will be inflicted on the plaintiff by denial of the relief sought than can result to the defendants by the granting of said relief.

WHEREFORE, PLAINTIFF PRAYS:

1. That the Court issue a preliminary injunction made permanent on final hearing, and pending hearing and determination of plaintiff's motion for a perliminary injunction the Court issue a temporary restraining order on the grounds that immediate, irreparable injury, loss and damage will result to plaintiffs before notice can be served and a hearing had on said Motion for Preliminary Injunction, all as more fully appears from this verified complaint and the affidavits of Philip J. Lee, M. C. Jennette and W. E. Satterwhite, attached to the Motion for Preliminary Injunction filed herewith.

2. That the temporary restraining order, preliminary injunction and permanent injunction enjoin and restrain the defendants individually and as officers, agents, servants, employees, representatives, members, attorneys and all other persons acting at the direction of or in active concert or participation with them, and all persons receiving notice of any such orders of the Court from:

(a) ordering, directing, authorizing, recommending, sanctioning, starting, continuing, permitting, or participating in the patrolling, picketing or blockading of, or the interference with, the entrances or exits of any kind or description, used by the employees of the plaintiffs in connection with their work or in land, buildings, facilities or other property operated, owned or controlled by plaintiffs.

(b) causing, compelling or inducing the employees of the plaintiffs to cease performing the duties of their employment in connection with the operation of the various plaintiffs particularly with respect to the transportation of passengers or to the receiving, transportation and handling of goods of any shipper, receiver or common

carrier, or causing, compelling or inducing the plaintiffs, or its employees or representatives to fail to provide facilities for the transportation of property belonging to any shipper, receiver, or common carrier, or to fail to carry, transmit or deliver the United States mail, or to fail to provide transportation for passengers, or causing, compelling or inducing the plaintiff or its employees to fail to perform their obligations as required by law;

(c) causing, compelling and inducing the plaintiffs, or its employees or representatives, to fail to perform any of their lawful duties, including the operating of locomotives, cars, or trains, or to interfere in any way with the delivery, loading, unloading, dispatch or movement of any of plaintiffs' rolling stock, engines, cars, equipment or trains or any of the contents or any of the passengers thereof;

(d) interfering with employees of plaintiffs in the performance of their respective duties of their employment by fines or otherwise, or paying any benefit and giving any money or anything of value to any employee of plaintiffs who refuse a lawful order to perform services for plaintiffs in accordance with any collective bargaining agreement covering said services in, on or about plaintiffs' facilities, or supporting in any way any employee of plaintiffs who refuses to obey a lawful order or request to perform such services.

3. That the Court enter a mandatory injunction requiring the defendants or any of them, until further order of the Court, to withdraw and countermand any order, directive, recommendation, request or other advice, heretofore issued by any of defendants' officers, agents, attorneys, or members, asking any of plaintiffs' employees not to render service in connection with the operation of the various plaintiffs.

4. That, on final hearing, plaintiffs may have damages against said defendants or some of them in such amount

as the Court may be to be just, as well as their costs in this action.

5. That the plaintiffs have such other and further relief as the Court may deem proper.

ATLANTIC COAST LINE RAILROAD COMPANY

.....

ROGERS, TOWERS, BAILEY, JONES & GAY
Attorneys for Atlantic Coast Line Railroad Company

JACKSONVILLE TERMINAL COMPANY

.....

MCCARTHY, ADAMS & FOOTE
Attorneys for Jacksonville Terminal Company

SEABOARD AIR LINE RAILROAD COMPANY

.....

COX, GRISSETT & WEBB
Attorneys for Seaboard Air Line Railroad Company

Mr. McAlliley: It is only for the record.

Mr. Milledge: As I read the amended complaint, I don't see the names mentioned in it, other than in the caption, and, unless there's some allegations—it seems to me that this—that it is just—that it is just—that it unnecessarily burdens this matter to have other people in it.

I don't think there would be any representations here, Your Honor, that they are members of any of the defendant labor organizations.

The Court: Who do you conceive that A. L. Groves, and C. H. Wright are, Mr. Adams?

Mr. Adams: We contend, Your Honor, that they are members of another union, a non-operating union and we hope and expect to be able to prove that these people acted together in aiding and abetting in the acts which we say the defendants are guilty of.

The Court: And you say a "non-operating union"?

Mr. Adams: It is the Brotherhood of the Railway Clerks, I believe, is the particular union involved. And, we say that these men were actually acting together with, and in concert with the other named defendants.

The Court: But, you do not seek to join as a defendant, the Brotherhood of Railway Clerks, itself?

Mr. Adams: No.

The Court: Well, your motion to add those two, as defendants, is granted, and if you conceive that you need leave to file an amended complaint, that is granted, as well.

I am inclined to think you can do that without a Court order, and an order will be entered giving that leave.

The amended complaint was served on counsel for the defendants, I take it, on May 27th?

Mr. Milledge: It was served yesterday, yes, sir, but I have kind of lost track of the time.

Mr. Adams: I believe it was yesterday.

The Court: Yes, yesterday. It was yesterday. Another small matter. The amended complaint, on page three

thereof, in the last full line on that page, I shall, with your permission, change the word "*imminent*" to *emînate*, it is an interlineation.

Mr. Adams: All right.

The Court: And initial it on the margin. And, on page five, in paragraph 13 is a recital, all of which appears from the affidavits of certain named persons attached hereto and by this reference made upon this complaint. I take it that you mean the affidavits of those persons attached to the